STATE OF MICHIGAN

COURT OF APPEALS

CANAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

JOYCE RUTH HILL, Personal Representative of the ESTATE OF MICHAEL KEENE HILL, Deceased, L.F. TRANSPORTATION, INC., ZBIGNIEW SZWAJNOS, ANDRZEJ LASSAK, JAN KOMAR, HARCO INSURANCE COMPANY, ACCEPTANCE INSURANCE COMPANY, and AUTO-OWNERS INSURANCE COMPANY,

Defendants-Appellees,

and

WALL STREET SYSTEMS, INC. d/b/a TRANS-NATIONAL and SAFECO INSURANCE COMPANY,

Defendants.

UNPUBLISHED
September 3, 1999

No. 208953
Van Buren Circuit Court
LC No. 96-041738 CK

Before: Cavanagh, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Plaintiff Canal Insurance Company appeals the trial court's August 19, 1997 order granting summary disposition and declaratory relief, which provided that the insurance policy plaintiff issued to defendant L.F. Transportation, Incorporated ("LFT") provided liability coverage for the underlying tort action. We affirm.

This appeal arises from a declaratory judgment action filed by plaintiff concerning whether an insurance policy issued by plaintiff covered damages arising from an accident that took place on I-94 in Van Buren County. Decedent Michael Keene Hill died when his truck hit a tractor trailer driven by

defendant Jan Komar. While driving a 1992 Kenworth tractor, Komar had hauled a truckload of cleaning compound and corrosive liquid from Chicago to California for defendant LFT. Plaintiff provided LFT liability coverage for the Kenworth tractor. The Kenworth was owned by defendant Andrzej Lassak, Komar's employer, and leased to LFT. After Komar delivered the materials, he drove the Kenworth back, carrying a shipment of produce bound for Toronto that Lassak had arranged for Komar to pick up.[1] When Komar arrived in Chicago en route to Toronto, the Kenworth developed mechanical problems. To ensure that Komar could complete the trip to Toronto, Lassak arranged to lease or borrow a 1985 Mack tractor owned by defendant Zbigniew Szwajnos. Szwajnos had previously leased the 1985 Mack to defendant Wall Street Systems, Incorporated, d/b/a Trans-National ("Wall Street"). Komar eventually delivered the produce to Toronto driving the Mack and headed back toward Chicago with an empty trailer. The accident occurred in Van Buren County during Komar's return to Chicago.

Defendant Joyce Ruth Hill, on behalf of the decedent's estate, filed a wrongful death action against LFT, Wall Street, Lassak, Komar and Szwajnos. In that case, the court concluded that at the time of the accident Komar was not in the employ of LFT. Accordingly, the court granted summary disposition to LFT, who had been named as a party on a respondeat superior liability theory. In addition, the court granted Wall Street summary disposition, apparently on the basis that when Szwajnos loaned the 1985 Mack to Lassak, Szwajnos' lease to Wall Street automatically terminated.

After Hill filed the wrongful death action, plaintiff filed the instant declaratory judgment action that is the subject of this appeal, naming as defendants the parties in the underlying tort action. In addition to the parties in the underlying tort action, plaintiff named (1) defendant Harco Insurance Company ("Harco"), who provided Jan Oblazney[2] a policy for the 1992 Kenworth Komar had driven until its breakdown; (2) defendant Acceptance Insurance Company ("Acceptance"), who provided Szwajnos a "bobtail"[3] policy that covered the 1985 Mack; and (3) Safeco Insurance Company ("Safeco"), who had provided Wall Street an insurance policy covering the 1985 Mack. Auto-Owners Insurance Company ("Auto-Owners"), who provided uninsured motorist coverage for the deceased, later intervened as a defendant.

Plaintiff and all insurance company defendants filed motions for summary disposition, each contending that their policies did not cover the accident. Auto-Owners and Harco also claimed that plaintiff provided coverage. The court granted summary disposition in favor of the defendant insurance companies and against plaintiff, concluding that the policy issued by plaintiff covered the accident.

Plaintiff contends that the court erred in determining that the policy it issued LFT covered damages arising from the accident. In interpreting the terms of an insurance contract, this Court must read the contract as a whole and give meaning to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). The language of a policy should be construed in light of the circumstances. *Bosco v Bauermeister*, 456 Mich 279, 300; 571 NW2d 509 (1997). If an insurance contract's language is clear, allowing but one interpretation, its construction is a question of law for the court. *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994). If an insurance contract is ambiguous, the ambiguities are to be construed against the insurer who is the drafter of the contract. *State Farm Mutual Automobile Ins Co v Enterprise Leasing Co*,

452 Mich 25, 38; 549 NW2d 345 (1996). We review the language of an insurance contract and rulings on motions for summary disposition de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998); *Glancy v City of Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998).

The only question in this case is whether plaintiff provided liability coverage. Plaintiff issued LFT a policy explicitly covering the Kenworth tractor, which Lassak had leased to LFT for a one-year period. The Lassak-LFT lease required that LFT provide liability, property and cargo insurance for the truck. The lease also specifically authorized Lassak to "service others when business is not available." LFT obtained a liability insurance policy from plaintiff. Plaintiff's policy insured the following persons, as listed, in relevant part, in policy paragraph III:

> (a) the named insured;
>
> (b) any partner or executive officer [of the named insured], but with respect to a temporary substitute automobile only while such automobile is being used in the business of the named insured;
>
> (c) any other person while using an owned automobile or a temporary substitute automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission.

In paragraph VII, the policy defines a "temporary substitute automobile" as "an automobile not owned by the named insured or any resident of the same household, while temporarily used with the permission of the owner as a substitute for an owned automobile when withdrawn from normal use for servicing or repair or because of its breakdown, loss or destruction."

Plaintiff first argues that neither Lassak nor Komar qualifies as a person insured under policy subparagraph III(b), which referenced partners or executive officers of the named insured. We agree with plaintiff's position; nothing in the record supports the conclusion that either Lassak or Komar was a partner or executive officer of LFT. The Lassak-LFT lease indicates that Lassak occupied the status of an independent contractor.

Plaintiff next maintains that neither Lassak nor Komar represents an insured person within the meaning of policy subparagraph III(c), which refers to any person using an owned automobile or a temporary substitute automobile with the permission of the named insured (LFT), provided his actual operation or use is within the scope of the permission. Plaintiff asserts that neither Lassak nor Komar could be included here because the Mack was not being used with LFT's permission. However, allowing Lassak to use a vehicle insured by LFT for Lassak's own business, when he was not working for LFT, was part of the agreement between the parties. The Lassak-LFT lease agreement explicitly authorized Lassak to use the Kenworth "to service others when business is not available." Furthermore, LFT's consent to use a temporary substitute vehicle could be implied by the nature of the business and the relationship between the parties. See *Jones v Farm Bureau Mut Ins Co*, 172 Mich App 24, 27; 431 NW2d 242 (1988) (The language of an insurance contract will be construed with

reference to the parties' relations and the type of property insured.); 8 Couch, Insurance, 3d § 117:66. The trial court noted that the use of the Kenworth for Lassak's own hauling business was what made the Lassak-LFT leasing arrangement work. Thus, even though no evidence showed that LFT directly told Lassak that he could substitute the 1985 Mack for the Kenworth, this consent was implicit from the nature of the Lassak-LFT business arrangement.

Plaintiff next alleges that the Mack tractor was not a "temporary substitute automobile" within the policy meaning because LFT did not retain exclusive use of and thus did not "own" the Kenworth tractor, the vehicle for which the Mack substituted. MCL 257.37(a); MSA 9.1837(a) defines a vehicle owner as including "[a]ny person, firm, association, or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days." According to plaintiff, for vehicle ownership to exist the statute requires both a lease and exclusive use. No reasonable reading of the statute, however, supports this interpretation. In construing statutes, this Court should, as far as possible, give effect to every phrase, clause and word. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). Plaintiff's argument ignores that the connector "or" is used, indicating that a rental agreement and exclusive possession are alternative means by which a person becomes an "owner." *Auto-Owners Ins Co v Stenberg Bros, Inc*, 227 Mich App 45, 50; 575 NW2d 79 (1997) (The word "or" generally refers to a choice or alternative between two or more things.). Our Supreme Court has held that the lessee of a truck was a statutory owner notwithstanding that the lease agreement allowed the lessor to use the vehicle in his own business when the vehicle was not needed by the lessee. *Ketola v Frost*, 375 Mich 266, 278-279; 134 NW2d 183 (1965).

Moreover, the Mack tractor otherwise fits plaintiff's policy's definition of a "temporary substitute vehicle." The Lassak-LFT lease agreement clearly permitted Lassak to use the Kenworth when it was not being used for LFT's business. Under the terms of plaintiff's policy, Lassak would qualify as an insured as long as he was using the Kenworth with LFT's permission. As we have discussed, the Lassak-LFT lease agreement expressly allowed Lassak to use the Kenworth for business when Lassak was not working for LFT. Lassak arranged that the Mack would substitute for the Kenworth when it was not running properly, using the substitute vehicle with the permission of Szwajnos, the owner of the substitute. *Frankenmuth Mut Ins Co, Inc v Continental Ins Co*, 450 Mich 429, 438 n 10; 537 NW2d 879 (1995). Thus, the Mack falls within plaintiff's policy's definition of a "temporary substitute automobile," being driven with consent of LFT, the named insured.

Lastly, plaintiff argues that defendant Auto-Owners should have "targeted" either Harco or Safeco. Plaintiff's argument ignores that Auto-Owners was not the instant party plaintiff. Moreover, plaintiff acknowledged at the hearing on its motion for summary disposition that "there is no coverage on the Safeco policy from this accident and [plaintiff] has no objection to Safeco . . . being dismissed from this action." Plaintiff likewise acquiesced in the trial court's grant of Harco's motion for summary disposition.[4] Accordingly, plaintiff cannot now argue that Safeco or Harco should provide coverage. *Farm Credit Services of Michigan's Heartland, PCA v Weldon*,

232 Mich App 662, 684; ___ NW2d ___ (1998) (Error requiring reversal cannot be error to which the aggrieved party contributed.).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage

[1] The record is not clear with respect to the identity of the person or company with whom Lassak had arranged to haul the produce to Toronto.

[2] Plaintiff's complaint alleged that Oblazney "and/or defendant Andrzej Lassak owned [the] 1992 Kenworth tractor." After determining that Oblazney had never been served with plaintiff's instant complaint, the trial court dismissed Oblazney from this case.

[3] The following definition of "bobtail" is instructive:

> "Bob-tail" in trucking parlance is the operation of a tractor without an attached trailer. For insurance purposes, however, it typically means coverage "only when the tractor is being used without a trailer or with an empty trailer, and is not being operated in the business of an authorized carrier." Bob-tail/deadhead insurance is also known as "non-trucking use insurance." Owner-operators who lease trucks, tractors and trailers with drivers to authorized carriers frequently carry limited liability or "bob-tail/deadhead" insurance. [*Prestige Casualty Co v Michigan Mut Ins Co*, 99 F3d 1340, 1343 (CA 6, 1996) (citations omitted).]

[4] Plaintiff repeated at the trial court hearing on its motion for reconsideration that it did not seek to bring either Safeco or Harco "back into the matter."